IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 279 of 1991

Date of Decision :- March 21, 2007

Jarnail Singh ....PETITIONER

VERSUS

State of Punjab ....RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL

Present:- Mr. Amar Vivek, Advocate
for the petitioner.

Mr. J.S.Dhillon, DAG Punjab.

MEHTAB S.GILL, J.

This is a revision against the judgment dated 10.4.1991 of the Additional Sessions Judge, Ferozepur, affirming the judgment dated 4.4.1989 of the Judicial Magistrate 1st Class, Zira, whereby he convicted Jarnail Singh son of Arjan Singh under Section 9 of the Opium Act and sentenced him to undergo R.I. for two years and to pay a fine of Rs.2,000/-, in default to further undergo R.I. for two months.

The case of the prosecution is that on 5.1.1984 ASI Jagir Singh, along with other police officials was coming back to the police

station via Fateghar Sabhra being out on patrol duty. When the police party reached near the canal minor bridge in the revenue estate of Village Gatta Patshah, the petitioner was apprehended. On his personal search, one gunny bag, containing opium Ex.P1 was recovered. On weighing, opium was found to be 10 Kgs. Sample of 20 grams opium was taken and the remaining opium was put in a pipa tin Ex.P2. The sample was sealed with the impression 'JS'. Ruqa Ex.PE was sent, on the basis of which FIR Ex.PE/1 was recorded.

The prosecution to prove its case brought into the witness box ASI Arjinder Singh as PW1, MHC Tara Singh as PW2, ASI Jagir Singh as PW3 and Constable Chamkaur Singh as PW4.

Learned counsel for the petitioner has argued, that the place of recovery was 60 miles away from the village of the petitioner and Rs.10/- was recovered in the course of Jamatalashi. It is not imaginable that a person, who was 60 miles away from his village, would have only Rs.10/- in his pocket. Affidavits Ex.DA, Ex.DB and Ex.DC are defective. What the witnesses stated in Court is a different version, as what they have stated in their affidavits. No independent witness was joined, in spite of the Investigating Officer having the opportunity to do so.

Learned counsel for the State has argued, that the affidavits tendered should have been confronted with the statements given in Court by the prosecution witnesses. Without confronting these affidavits with the oral testimony of the witnesses, we should not jump to a conclusion, that the affidavits are defective. Recovery is of the year 1984. The law and order condition at that time was not in a healthy state. No witness was

ready to come forward and give evidence for the police. The minor discrepancies pointed out in the statements of ASI Arjinder Singh PW1 and ASI Jagir Singh PW3 are due to lapse of time, as recovery is of the year 1984 and the witnesses have deposed after a gap of five years i.e. in 1989.

I have heard the learned counsel for the parties, perused the impugned judgments and the record with their assistance.

Affidavits Ex.DA, Ex.DB and Ex.DC were produced by the prosecution. Deponents of the affidavits were examined on oath, but were not confronted with the truthfulness of the affidavits. There are minor discrepancies in affidavits Ex.DA, Ex.DB and Ex.DC and in the testimony of the witnesses, which would not materially effect the prosecution witnesses. The recovery of Rs.10/- and hmt Pilot watch in Jamatalashi, when the petitioner was 60 miles away, does not make much difference. Petitioner was carrying the contraband and for such like persons to borrow money from the persons for they supply opium to, is not difficult. The discrepancies pointed out by the learned counsel for the petitioner in the statements of ASI Arjinder Singh PW1 and ASI Jagir Singh PW3 are very minor in nature. ASI Arjinder Singh PW1 has stated, that Sutlej river is ½ K.M. away from the place of recovery, while ASI Jagir Singh PW3 has stated, that it is 1-½ K.Ms. Similarly, the place of recovery being on eastern side or western side is also a very minor discrepancy.

I do not find any infirmity in the judgment of the learned Additional Sessions Judge, Ferozepur.

Sentence of the petitioner seems to be on the higher side. Recovery is of the year 1984 and revision is of the year 1991. Petitioner is facing trial for the last 23 years, which itself is a punishment. Sentence of the petitioner is modified to that already undergone.

With the above modification in sentence, revision petition is dismissed.

March 21, 2007 **(MEHTAB S.GILL)**
S.K.Arora **JUDGE**